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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/654,367	09/02/2003	Reid Rabon	163.1436USD1	4230

7590 12/29/2006
Attention of Mark T. Skoog
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P.O. Box 2903
Minneapolis, MN 55402-0903

EXAMINER

BOYER, CHARLES I

ART UNIT	PAPER NUMBER
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1751

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/29/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/654,367

Applicant(s)

RABON ET AL.

Examiner

Charles I. Boyer

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 42-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 42-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is responsive to applicants' amendment and response received October 12, 2006. Claims 42-59 are currently pending.

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 42-59 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-78 of U.S. Patent No. 6,632,291. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the patent contain the same components as the application, that is, a cleaning, rinsing, and sanitizing composition. The patent also

Art Unit: 1751

teaches a drying station and note that in any washing process, the utensil must inherently be dried at some point.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 42 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 42 contains two separate definitions of the carbonate cleaning composition. One definition contains a specific amount of sodium carbonate and phosphonate, while the other definition contains a hydrated and non-hydrated sodium carbonate and a phosphate. It is not clear which is the carbonate composition claimed.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 42-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pelletier, US 5,771,840 in view of Lentsch et al, US 6,156,715 and further in view of Lentsch et al, US 5,880,088.

Pelletier teaches an apparatus for washing an animal cage (see abstract). The reference teaches that typical cage washing devices include a pre-wash station, a wash station, a rinse station, a disinfecting station, and a drying station (col. 1, lines 29-35). The examiner notes that such an apparatus is quite common in the art. There are many automatic devices that contain washing, rinsing, and sanitizing stations, as well as manual warewashing systems containing a washing sink, a rinsing sink, and a sanitizing sink (see US 6,659,114 and US 2003/0059483). That being said, the prior art does not specifically teach a washing device utilizing the specific washing and rinsing compositions presently claimed.

Lentsch 715 et al teach a solid block warewashing detergent comprising an anhydrous sodium carbonate, a hydrated sodium carbonate, and a phosphonate (col. 21, claim 1). The examiner notes that warewashing compositions containing sodium carbonate and phosphonate sequestrants are very common in the art.

Lentsch 088 et al teach solid block rinse aids for dilution in a washing machine and subsequent rinsing of utensils (see abstract). Lentsch et al

Art Unit: 1751

specifically teach that "The liquid materials of the invention can be adapted to a solid block rinse by incorporating into the composition a casting agent.

Typically organic and inorganic solidifying materials can be used to render the composition solid. Preferably organic materials are used because inorganic compositions tend to promote spotting in a rinse cycle. The most preferred casting agents are polyethylene glycol and an inclusion complex comprising urea and a nonionic polyethylene or polypropylene oxide polymer.

Polyethylene glycols (PEG) are used in melt type solidification processing by uniformly blending the sheeting agent and other components with PEG at a temperature above the melting point of the PEG and cooling the uniform mixture" (col. 11, lines 8-20, emphasis added by the examiner). An example of such a composition comprises 73% EO/PO block polymer, silicone antifoam, and 16% urea (col. 16, example 5). The EO/PO polymers taught by the reference appear to be the same as those presently claimed (see col. 7, lines 36-52). Accordingly, Lentsch et al appear to teach the exact same rinsing composition as claimed by applicants.

Accordingly, as the apparatus claimed by applicants is very well known in the art, and both the cleaning and rinsing compositions claimed are well known in the art, it would have been obvious to one of ordinary skill in the art to use the cleaning and rinsing compositions of Lentsch et al (715 and 088) in

Art Unit: 1751

the cage cleaning apparatus of Pelletier et al and so render obvious the claims at hand.

The examiner acknowledges that the references relied upon above do not specifically teach a "medical" cart or cage. The examiner maintains that as cages and other utensils are taught for cleaning by the references, one of ordinary skill in the art would recognize the utility of this apparatus and washing and rinsing method for cleaning any type of cart, cage, or utensil, medical or otherwise.

Claims 42-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pelletier, US 5,771,840 in view of Lentsch et al, US 6,156,715 and further in view of Schulz et al, US 5,698,513.

Pelletier teaches an apparatus for washing an animal cage (see abstract). The reference teaches that typical cage washing devices include a pre-wash station, a wash station, a rinse station, a disinfecting station, and a drying station (col. 1, lines 29-35). The examiner notes that such an apparatus is quite common in the art. There are many automatic devices that contain washing, rinsing, and sanitizing stations, as well as manual warewashing systems containing a washing sink, a rinsing sink, and a sanitizing sink (see US 6,659,114 and US 2003/0059483). That being said,

the prior art does not specifically teach a washing device utilizing the specific washing and rinsing compositions presently claimed.

Lentsch 715 et al teach a solid block warewashing detergent comprising an anhydrous sodium carbonate, a hydrated sodium carbonate, and a phosphonate (col. 21, claim 1). The examiner notes that warewashing compositions containing sodium carbonate and phosphonate sequestrants are very common in the art.

Schulz et al teach solid block rinse aids for dilution in a washing machine and subsequent rinsing of utensils (see abstract). An example of such a composition comprises 84.48% EO/PO block polymer, 12% urea, and 3.5% water (col. 14, example 2). Accordingly, Schulz et al appear to teach the exact same rinsing composition as claimed by applicants.

Accordingly, as the apparatus claimed by applicants is very well known in the art, and both the cleaning and rinsing compositions claimed are well known in the art, it would have been obvious to one of ordinary skill in the art to use the cleaning and rinsing compositions of Lentsch et al (715 and 088) in the cage cleaning apparatus of Pelletier et al and so render obvious the claims at hand.

The examiner acknowledges that the references relied upon above do not specifically teach a "medical" cart or cage. The examiner maintains that

Art Unit: 1751

as cages and other utensils are taught for cleaning by the references, one of ordinary skill in the art would recognize the utility of this apparatus and washing and rinsing method for cleaning any type of cart, cage, or utensil, medical or otherwise.

3. The rejection of claims 42, 47, 51, and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richter et al, US 5,234,719 is withdrawn in view of applicants' amendment and response.

4. The rejection of claims 42, 47, 51, and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bull, US 5,310,549 is withdrawn in view of applicants' amendment and response.

Conclusion

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles I. Boyer whose telephone number is 571 272 1311. The examiner can normally be reached on M-Th 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on 571 272 1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Charles I Boyer

A handwritten signature in black ink, appearing to read "Charles I. Boyer", written in a cursive style.